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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 GUY R. WOODARD,

9 *Plaintiff,*

10 vs.

11 JAMES COX, *et al.,*

12 *Defendants.*  
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2:12-cv-02120-JCM-NJK

ORDER

15 This *pro se* prisoner civil rights action comes before the court on plaintiff's second  
16 application (#7) to proceed *in forma pauperis* as well as on plaintiff's motion (#3) for a  
17 preliminary injunction.

18 The first pauper application was deficient because plaintiff did not submit a pauper  
19 application on the court's required form. The complaint alleges factual allegations in and after  
20 February 2012, well within the applicable two-year statute of limitations.

21 The court's general practice in such a situation is to dismiss the improperly-  
22 commenced action without prejudice where such a dismissal will not lead to a promptly filed  
23 and properly commenced new action being time-barred or otherwise cause substantial  
24 prejudice to the plaintiff. The court departed from that practice in this case because the  
25 motion for a preliminary injunction presented at least facially plausible allegations that plaintiff  
26 faced an imminent risk of serious harm. Plaintiff alleged, first, that he had been denied a  
27 hearing aid, which placed him at risk in the prison environment, such as, for example, being  
28 at risk if he failed to hear and obey commands from an armed tower guard. Plaintiff alleged,

1 second, that he was being denied medication prescribed by a vascular specialist for  
2 peripheral artery disease, which potentially presented a risk of serious medical complications.

3 The court accordingly denied the first pauper application without prejudice to the filing  
4 of a proper second application, but without also dismissing the action without prejudice; and  
5 the court directed defendants to respond to the motion for a preliminary injunction in the  
6 interim.

7 Only nine days into the thirty-day period allowed by the court, plaintiff mailed a second  
8 pauper application on the correct form but without the required financial certificate and inmate  
9 account statement. Plaintiff stated that he was slated to be released on parole to a halfway  
10 house eleven days later. He stated that he would try to follow later with the required financial  
11 paperwork if he received it prior to his release or it was forwarded to him thereafter.

12 The parties further have completed briefing on the motion for a preliminary injunction.  
13 The briefing establishes that the request for preliminary injunctive relief is moot. Plaintiff has  
14 been released to a transitional facility, or halfway house, in Las Vegas. He thus no longer is  
15 restricted to the medical care available through the state prison in which he previously was  
16 incarcerated. Regardless of the condition or conditions that require attention or care,<sup>1</sup> plaintiff  
17 now can seek indigent medical care in Las Vegas. Plaintiff's arguments in his reply go to  
18 whether defendants should be held liable for past circumstances and/or be found financially  
19 responsible for present and future medical care. Such matters may be addressed by  
20 monetary damages and do not establish irreparable injury. The factual predicate for  
21 establishing a potential for irreparable injury – alleged denial of medical care in situations that  
22 possibly presented an imminent risk of serious harm – no longer exists. The motion for a  
23 preliminary injunction therefore will be denied as moot, subject to plaintiff's ability to pursue  
24 claims for monetary damages, to the extent, if any, that such claims may have merit.

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26 <sup>1</sup>Plaintiff refers in the reply to the prospect that he may need adequate testing for the presence of  
27 tuberculosis. No such claim was raised in the complaint. Plaintiff may not pursue relief by motion that does  
28 not have a foundation in the claims alleged in the complaint. In all events, regardless of the specific medical  
examination, testing, or treatment that plaintiff allegedly needs, he now is able to seek such care through  
indigent medical services in Las Vegas.

1       The court thus is presented with a situation where the plaintiff has submitted two  
2 deficient pauper applications, a promptly-filed new action would not be time-barred, and  
3 plaintiff otherwise will not sustain substantial prejudice from a dismissal of the present  
4 improperly-commenced action without prejudice.

5       The court accordingly will follow its general practice and will dismiss the current  
6 improperly-commenced action without prejudice to the filing of a new complaint in a new  
7 action with a properly-completed pauper application. In this regard, the court follows the prior  
8 unpublished decision in *Johnson v. Clark County Detention Center*, No. 2:07-cv-00769-PMP-  
9 PAL (D. Nev., Jan. 24, 2008). In *Johnson*, after reviewing conflicting appellate court holdings  
10 from other circuits, the court held that the pauper application and fee payment provisions of  
11 the Prison Litigation Reform Act (PLRA) continue to apply if an inmate is released during the  
12 litigation. As the court noted in *Johnson*, however, a plaintiff potentially may be able to avoid  
13 the PLRA requirements as a practical matter simply by waiting until after he is fully released  
14 to commence his action. That is, if the plaintiff files an action after he no longer is a “prisoner”  
15 for purposes of 28 U.S.C. § 1915(h), he then can commence an action without being required  
16 to comply with the provisions regarding fee payment and pauper applications applicable to  
17 prisoners. *See also Jackson v. Johnson*, 475 F.3d 261 (5<sup>th</sup> Cir. 2007)(holding in the particular  
18 circumstances presented that a plaintiff in a halfway house continued to be a prisoner for  
19 purposes of applying the PLRA).

20       IT THEREFORE IS ORDERED that the application (#7) to proceed *in forma pauperis*  
21 is DENIED without prejudice.

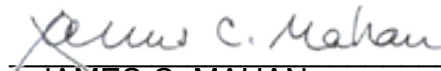
22       IT FURTHER IS ORDERED that the motion (#3) for a preliminary injunction is DENIED  
23 as moot and that all remaining pending motions, including ## 2 & 4, are DENIED without  
24 prejudice.

25       IT FURTHER IS ORDERED that this action is DISMISSED without prejudice to the  
26 filing of a new complaint in a new action together with either the required \$350.00 filing fee  
27 or a properly completed application to proceed *in forma pauperis* on the proper form and with  
28 new financial attachments, to the extent then required.

1 IT FURTHER IS ORDERED that the clerk shall SEND plaintiff two copies each of an  
2 *in forma pauperis* application form for a prisoner, a pauper application for a non-prisoner, and  
3 a § 1983 complaint form, along with one copy of the instructions for the forms and one copy  
4 of the complaint that plaintiff submitted in this action.

5 The clerk shall enter final judgment accordingly, dismissing this action without  
6 prejudice.

7 DATED: January 23, 2013.

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10 JAMES C. MAHAN  
United States District Judge  
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